

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3990 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DB THANKI

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL for Petitioner

MR PREMAL JOSHI FOR M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. The petitioner seeks a declaration that his past services rendered from 1st July, 1966 to 12th October, 1980 as Section Writer and Junior Clerk in the Court of Civil Judge and Assistant Judge as mentioned in the petition, are required to be counted as qualifying service for pension purposes. A declaration is also

sought that Note : 3 to Rule 250 of Bombay Civil Services Rules, 1959 ('BCSR' for short) is ultravires the provisions of Articles 14 and 16 of the Constitution of India.

#. According to the petitioner, he was appointed on 1-7-1966 as Section Writer in the Court of Civil Judge (JD), Veraval. Thereafter, he was promoted as Clerk and was posted in the Court of Assistant Judge, Porbandar. He was reverted as Section Writer in October 1966 and due to abolition of certain courts, he was relieved from services by order dated 2-11-1966. Again by order dated 6-1-1967, he was reappointed as Junior Clerk at Veraval where he assumed his duties on 9-1-1967. According to the petitioner, he worked continuously from 9-1-67 uptill 5-8-1975 when he tendered his resignation and was relieved from the service on 31-8-1975. The petitioner thereafter became a lawyer and then, after five years' experience as lawyer, he was appointed as Assistant Public Prosecutor on 15-9-1980 and since then he has been working in that post. According to the petitioner, by circular dated 24th February 1966 which is at Annexure-A to the petition, the State Government liberalized the pension rules and extended pensionary benefits to the employees by including all services whether temporary or permanent, interrupted or continuous as qualifying service and omitting the periods of break while working out aggregate service. The petitioner wrote a letter dated 7th May, 1984 which is at Annexure-B to the petition, to the Government seeking benefits of the said resolution. The State Government by their reply at Annexure-C to the petition, sent in November 1984 in response to the said application dated 7th May, 1984 informed the petitioner that since he had resigned, his past services could not be considered for the purpose of pension in view of Note : 3 of Rule 250 of BCSR. This stand taken by the State Government has been challenged by the petitioner.

#. Under Rule 250 of the BCSR, it is provided in Clause (b) that unless Government in any case otherwise direct, an interruption of service shall entail cancellation of all duty counting for pension. Resignation of Government Service constitutes an interruption of service as laid down in Rule 250 (a) (1). Therefore, if the rule applied to the petitioner's case since he had resigned of his own, there was interruption of service which entailed cancellation of all duty that he had performed prior to the resignation for the purpose of counting pension. It however, appears that after liberalization reflected in the resolution dated 24th February 1966 which is at

Annexure-A, Note : 4 has been added to Rule 250 of BCSR by notification dated 1st May, 1971 and the said Note : 4 reads as under :-

"The provisions of this rule shall not apply to a Government servant retiring on or after 1st April, 1966 and to whom the Revised Pension Rules, 1950 are applicable, provided that the Government servant who is reappointed to Government service after resignation of his own accord or after removal from Government service, the service rendered by him prior to the date of resignation or removal shall not count for pension or Death cum Retirement Gratuity unless specific entries are made in his book."

#. Therefore, the Rule which had the effect of treating cancellation of past service while counting qualifying period for pension, due to interruption brought about by resignation was made inapplicable to a Government servant retiring on or after 1st April, 1966 and to whom the revised pension Rules, 1950 were applicable, subject to proviso contained in Note : 4 to Rule 250, as per which, the Rule would not apply only if the specific entries are made in his service book of the Government servant who is reappointed after resignation of his own accord. In the present case, it appears that concerned authority has not applied its mind to the provisions of Note : 4 to Rule 250 and has by its communication at Annexure-C rejected the application of the petitioner on the basis of Note : 3 of Rule 250 of BCSR, under which, Heads of Department may condone not more than three interruptions of total period not exceeding 3 months in all. Note : 3 would be applicable if the rule itself applied and interruptions have the effect of entailing cancellation of all duty counting for pension. In the instant case, there was no question involved of any powers of Heads of Department to condone but the question was as to whether Rule 250 itself applied in view of the Note : 4 mentioned above. If Rule 250 is held to be inapplicable which depends on the requirement of the proviso of Note : 4 to Rule 250 being satisfied, then reference to other Notes would not be relevant but if the Rule applies then the question may have to be considered in light of its provisions read with other notes. In this view of the matter, the impugned communication at Annexure-C to the petition rejecting the application of the petitioner dated 7th May, 1984 is hereby set aside and the respondent is directed to reconsider the application of the petitioner dated 7th May, 1984 which is at Annexure-B to the

petition, in light of the provisions contained in Note :
4 of Rule 250 of the BCSR and take a fresh decision in
the matter expeditiously preferably within 4 weeks from
the date on which the writ of this order is received by
the respondent. Rule is made absolute accordingly with
no order as to costs.

Date : 10-3-2000 (R.K.Abichandani, J.)

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